IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1085 OF 2001

Association of Engineering Workers....Petitioner.

Vs.

Metal Box INdia Limited & Anr. ...Respondents.

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Mr.R.D.Bhat for the Petitioner.

Mr. C.U. Singh with Mr.K. S. Bapat for the Respondents. .....

CORAM : DR.D.Y.CHANDRACHUD, J.

February 7, 2005.

P.C. :

On 19th June 1998, the following reference was made to adjudication by the appropriate Government under Section 10 of the Industrial Disputes Act, 1947 :

> "Shri Walter Santis, T.No.748 be paid Suspension Allowance with effect from December 1996 onwards."

Mr.Walter Santis to whom the reference relates was employed in the Worli Unit of the First Respondent. He was placed on suspension on 9th November 1994. By its notice dated 15th December 1996, the First Respondent "suspended" operations at the Worli Unit. On 16th December 1996, Mr.Walter Santis was informed that since the operations of the Worli factory were being suspended, he was also to be covered by the suspension notice, but that upon the suspension of operations being lifted, the earlier order suspending him will be effective from the resumption of the operations of the Worli Factory. It is common ground now that there is no question of resumption of operations at the Worli Factory. It would appear that in pursuance of a consent order that was passed by a Division Bench of this Court in Writ Petition No.2732 of 2001 on 3rd May 2002 to which the Association of Engineering Workers was a party, it was agreed that upon the deposit of certain gratuity dues, the Company would be free to sell the Worli Factory. A Complaint of unfair labour practice has been filed before the Industrial Court (Complaint (ULP) No.169/2001) to which Mr.Walter Santis is the First Complainant. In that complaint which is under Item 6 of Schedule

II and Items 9 and 10 of Schedule IV, the reliefs which have been sought to include (i) A declaration that the suspension of manufacturing operation from 16th December 1996 is illegal; and (ii) A direction to the employer to pay full wages and consequential benefits to the workers from 16th December 1996. In the said complaint, interim relief for the lifting of lockout and payment of wages was refused by the Industrial Court and the Learned Single Judge by his order dated 15th July 2002 declined to interfere. When the matter was carried in appeal, a Division Bench of Mr.Justice H.L.Gokhale and Mrs.Justice Nishita Mhatre on 18th September 2002 noted that in view of the order of a Division Bench dated 3rd May 2002 in Writ Petition No.2732 of 2001 which was passed by consent of parties, and to which the Association of Engineering Workers was impleaded, the employer would be free to sell the Worli Factory and in this background there could not be an order of lifting of lock-out, particularly an interim order. The main complaint is still pending before the Industrial Court in which, as already noted earlier, Walter Santis is the First Complainant. In that complaint there is a substantive prayer for payment of wages with effect from 16th December 1996.

Counsel appearing on behalf of the First Respondent has stated before the Court that since as a matter of fact, there is no question of resumption of operations of the Worli Factory, having regard to this background which is already noted in the order of the Division Bench dated 18th September 2002, the workman in question (Walter Santis) has ceased to be and must be regarded as having ceased to be on suspension with effect from 16th December 1996. The claim of the workman to the payment of full wages on and after 16th December 1996 must lie, therefore, at par with other workmen on whose behalf the complaint has been filed before the Industrial Court. In this view of the matter, the dispute in the present case does not survive any further since the limited question referred to adjudication was the payment of subsistence allowance to the workman after December 1996. In that view of the matter, it is not necessary to consider the correctness of the award of the Industrial Court since the case of the workman concerned would have to be now dealt with by the appropriate forum on the foundation that his suspension has come to an end with effect from 15th December 1996. It is also necessary to record that Counsel for the First Respondent has specifically

stated before the Court that there is no occasion now for the suspension of the workman to revive or of its coming into operation once again since that issue has now been rendered academic by the subsequent developments. The Petition is accordingly disposed of.

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